

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10182 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAULATBHAI RANCHHODBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioners

Mr. V.B.Gharania, ASSTT. GOVERNMENT PLEADER for
Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 10/12/98

ORAL JUDGEMENT

By means of this petition, the petitioners have challenged the judgment and order dated 9.9.93 of the Government of Gujarat, Revenue Department whereby the order of the Competent Authority dated 12.10.87 passed in ULC/6(1)2/619-Utran-U.5 has been set aside.

2. Ranchhodbhai Fakirbhai filed a statement in form no.1 in the capacity of the representative of the family on 10.8.76 under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 and in that statement, the property in 17 items were shown. The surveyor submitted a report dated 10th July, 1987 regarding survey nos. 200, 219/5,A/165,167,180,182,179 of village Utran and survey no.24 of Amroli. The lands of Item nos.1 to 11 were found to be agricultural lands and hence, exempted under section 20 of the Act by the State Government. As regards the lands of nos. 28 and 29, later on exemption was withdrawn by an order dated 26.5.87. On the basis of the evidence on record, the Competent Authority considered the entry no. 729 dated 10th June, 1968 regarding the land of survey nos. 142, 140 and 144 and 28 and 29(new) of Amroli was in the name of Deviben as land owner and Ranchhodbhai Fakirbhai was declared as the owner of that land by an order dated 16.10.1919 of the Bombay High Court. After the death of Deviben, the property was inherited by the declarant as ancestral property. On the basis of pedigree table produced by Ranchhodbhai, his grand sons were adult, in that respect relevant certificates were also produced. The competent authority treated the land of six units in favour of three sons of Ranchhodbhai and three grand sons. Upon computation, the lands admeasuring 8694.94 sq.mtrs. in holding at the share of each of the heirs individual holdings, whole land was computed admeasuring 8694.94 sq.mtrs. in the share of heirs and share of each of heir individual holding land admeasuring 1449.156 sq.mtrs. As such, no land was held to be excess land by the competent authority and Deputy Collector, Surat. The Joint Secretary, Revenue Department, Gujarat State, while exercising revisional jurisdiction under section 34 of the Act, reversed the order of the Competent Authority by his order dated 9.9.93 holding 25698 sq.mtrs. of lands as excess vacant land. Therefore, being aggrieved by the said order of the Joint Secretary, Revenue Department, Government of Gujarat, the petitioners have filed the present petition in this Court.

3. The learned counsel for the petitioners argued that the order of the State Government is illegal on the face of the record and is not sustainable in the eye of law. He further argued that the property has been treated as self acquired property of Deviben and Ranchhodbhai was declared as the owner of the land by the order of the Bombay High Court. Hence, the Government treated one unit though it was treated as inherited property by the Competent Authority. Secondly, part of

the land acquired by the Government of survey nos. 28 and 29 has also been held of the owner only on the basis of the wrong entry made in village form no.7/12, though in fact, part of that land of survey no. 0-15-68 admeasuring 1568 sq.mtrs. and survey no. 29 0-18-21 admeasuring 18281 sq.mtrs. was acquired for constructing flood embankment on right side of the river as protective measures by the Government Notification dated 10.10.74 and that was published in the official gazette dated 15.11.76. The amount of compensation was also determined and the said amount had already been received by the declarant. However, only on the basis of wrong entries made in village form no. 7/12, the holding of Ranchhodbhai has been held to be holding that land which is an error on the face of the record and that is not sustainable in the eye of law.

5. The learned counsel for the petitioners further contended that there was some mistake regarding measurements of survey no.200. It is mentioned in the register as exempted land as 15000 sq.mtrs. in place of 25698 sq.mtrs. The Government has treated exempted to the extent of 15000 sq.mtrs though the whole land of that survey number was exempted by the appropriate authority. The next contention of the learned counsel for the petitioners is that item nos. 15 and 16 which are constructed property has also been included as holding though they are liable to be excluded not being vacant land under section 2(g)(ii) of the Act.

6. The learned Assistant Government Pleader contended that these arguments of the learned counsel for the petitioners have already been considered and dealt with by the Government in its judgment. Hence, no errors have been committed by the Government in passing the impugned order and reversing the order of the Competent Authority. He therefore, prayed that the impugned order passed by the Government be maintained.

7. I have gone through the papers and relevant record and have considered the submissions made on behalf of the parties.

8. So far as the error in the measurements of the land of survey no. 200 is concerned, the Government has dealt with these points, but the Government has rejected the submission of the learned counsel for the petitioner as no evidence has been produced by the petitioner in order to show that the whole land of that survey number to the extent of 25698 sq.mtrs. was exempted though in fact, an application was made for

agricultural exemption for that purpose. As no evidence was produced in this respect, the Government has presumed that the lands mentioned in the register of exempted land as 15000 sq.mtrs. was the land exempted only. It is a question of fact which has already been decided by the Competent Authority after perusing and appreciating evidence on record. In this respect, the learned counsel for the petitioner pointed out from the exemption order which shows that the whole land of survey no.200 admeasuring 25698 sq.mtrs. was exempted. Thus, it appears that without finding any further evidence, the Government has committed an error on the face of the record in treating only the land admeasuring 15000 mtrs. as exempted. So far as the property mentioned as item nos.2,3,4,5,9,10,11,12,13 and 14, the learned counsel for the petitioner submitted that the land of survey nos. 28 and 29 out of which the land admeasuring 13129.52 sq.mtrs. had been acquired by the Government for which the compensation has also been awarded and the same has been received by the petitioners. Even this land has not been mentioned in village form no. 7/12 as acquired by the Government. Hence, the State treated as holding of the petitioners and therefore, the Government has committed an error on the face of the record that the land which has been already acquired by the Government and the possession has been taken for different purposes and compensation has been awarded which has been received by the petitioners and that land cannot be included for this purpose of land ceiling. In this respect, the Government has committed an error apparent on the face of the record. Though the decision taken by the Competent Authority was based on the record of maintenance surveyor and in absence of any other evidence, the Government has committed an error in including that land as holding of the petitioners without holding that the surveyor's report was incorrect. The property of survey nos. 28 and 29 belonged to Fakirbhai Vallabhbai and after his death, it was recorded in the name of his widow Deviben and after her death, it was obtained by her son Ranchhodbhai and after his death, all members of the family of the land holder had obtained it by a right of inheritance, but the Government has treated the land as self acquired property by Deviben as no evidence regarding inheritance was produced before the Government. In this respect, the learned counsel for the petitioner has produced the order and the affidavit has also filed before the appropriate authority to the effect that it was an inherited property. It cannot be treated as self acquired property by Deviben who was the widow of Fakirbhai Vallabhbai and the Government has overlooked that evidence and has held contrary to the evidence. The

Government has also treated the land as the land acquired property of Deviben which was inherited by Ranchhodbhai pursuant to the order of the Bombay High Court and treated as one unit though it was asserted by the petitioners before the Competent authority that it was an ancestral property and it was not the property of Deviben,. It was the property of Fakirbhai Valabhbhai. After his death, the property was mutated in the name of Deviben. As such, on the face of the record, it cannot be treated as self acquired property of Deviben and having been inherited by Ranchhodbhai, it cannot be treated as one unit as there were there major sons and three major grand sons at the time when the Act came into force. As such, the Government has also committed an error in treating the land as one unit. On the basis of the judgment of the Bombay High Court dated 16.10.1919, the Competent Authority found that there were three major sons and three major grand sons of Ranchhodbhai and since then it cannot be treated as a self acquired property and it will be deemed to be an ancestral property. As such, the competent authority was justified in holding that it was an ancestral property and was also justified in granting six units to the petitioners after careful examination of the evidence on record.

9. In view of the above discussion, I hold that the Government has committed a manifest error in coming to the conclusion in absence of certain evidence. Thus, the findings of the Government are perverse and not sustainable in the eye of law. Consequently, the order dated 9.9.93 passed by the Revenue Department, Government of Gujarat is required to be quashed and set aside.

10. In the result, this petition is allowed. The order no. ULC/3490/2189/3172/V.3 dated 9.9.1993 passed by the Joint Secretary, Revenue Department, Government of Gujarat is hereby quashed and set aside and the order no. ULC/6(1)2/619/Utran-U.5 dated 12.10.87 passed by the Competent Authority and Deputy Collector (ULC), Surat is confirmed. Rule is made absolute accordingly with no order as to costs.

...
***darji